IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4746 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANSINH KABHAI RAOLJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4746 of 1999

MR UDAYAN P VYAS for Petitioner No. 1

MR PRADIP D BHATE A.G.P. for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 28/01/2004

ORAL JUDGEMENT

In this petition the petitioner has prayed for grant of deemed date of promotion together with all the

incidental benefits on the basis of the said deemed date including grant of retiral benefits. He has further prayed for quashing and setting aside the order dated 4th February, 1999 passed by respondent no.1 refusing to grant deemed date of promotion to the petitioner in Class-II.

2. The facts in nutshell can be stated as under :-

2.1. The petitioner was appointed as Surveyor in the office of Survey Mamlatdar at Ahmedabad on 11th May, 1955 in the cadre of Class-III. In the year 1957, he was promoted to the post of Maintenance Surveyor (Classer). In the year 1958, he passed Sub Service Departmental Examination and subsequently the Land Records Qualifying Examination (L.R.Q.) in the month of May, 1979. It may be noted here that he was made permanent in the employment on 2nd April, 1977. He was thereafter promoted to the post of Shirestedar on 25th January, 1988 in Class-III. He was promoted to the post of Shirestedar while he was working in the office of Superintendent, City Survey at Anand and lastly he was promoted to the post of Assistant District Inspector Land Records, Kheda, again a post in Class-III on 19th October, 1991. He retired from the said post on 30th November, 1991, when he reached the age of superannuation.

2.2. It appears from the record of the petition that right from the beginning there was a confusion with regard to the deemed date of promotion to the post of Shirestedar so far the petitioner was concerned. In all, there are three orders on record passed by the respondents granting him deemed date of promotion on the post of Shirestedar and in all the three orders different dates have been determined as date of promotion of the petitioner to the post of Shirestedar. The petitioner made a representation dated 5th July, 1988 requesting the concerned authority to grant him deemed date of promotion, since injustice was caused to him in promoting him to the post of Shirestedar. Vide order dated 1st April, 1989 the petitioner was given deemed date of promotion to the post of Shirestedar from 29th January, 1980. This was considered in light of the deemed date granted to one Mr.J.R. Desai who at the relevant time was working as Clerk, in Superintendent Land Record, Vadodara Division. However, by order dated 16th May, 1989 the petitioner was directed that the order granting deemed date of promotion as 29th January, 1980 shall not be implemented till further orders. Again, the said issue was considered by the respondents and vide order dated 7th June, 1989 the petitioner was granted deemed

date of promotion as 3rd November, 1987. It appears that being aggrieved by refixation of the deemed date, the petitioner submitted representation to the respondents which was termed as Appeal but it was turned down by order dated 6th/11th September, 1989. The petitioner again made effort to convince the respondents and he filed second representation dated 18th September, 1989, which was duly considered by the respondents and order dated 31st March, 1990 was passed wherein the petitioner's case was considered vis-a-vis one Mr.B.S. Shah and he was considered to be senior of Mr.B.S. Shah and it was also decided that he should be given deemed date of promotion to the post of Shirestedar as 1st June, 1982. In view of refixation of the deemed date of promotion to the post of Shirestedar, the petitioner made an application to the respondents dated 8th August, 1990 requesting them to grant him deemed date of promotion to the post in Class-II cadre i.e. the date on which his immediate junior Mr.B.S. Shah was promoted to the post in Class-II. The said representation was not decided for a considerable time and, therefore, the petitioner was constrained to approach this Court by filing Special Civil Application No. 8275 of 1992. The said petition was disposed of by this Court vide order dated 11th February, 1993, directing the respondents to consider the application of the petitioner dated 8th August, 1990 as expeditiously as possible and to dispose of the same preferably within eight weeks from the date of the receipt of the writ of this Courts order. It appears that instead of eight weeks, the respondents took about eight long years from the date of representation and six years from the order of this Court to comply with the direction given by this Court. Vide order dated 4th February, 1999, the respondents turned down the application of the petitioner on the ground that when the Selection Committee considered the case of Mr.B.S. Shah who is junior to the petitioner for promotion on 23rd July, 1987, the petitioner was not promoted to the post of Shirestedar and, therefore he had not entered the zone of consideration for the promotion to the post in Class-II. It was further stated in it that on 16th March, 1991 the case of the petitioner was again considered by the Selection Committee, so that promotion to the post of Class-II could be granted but before any orders could be issued. Pursuant to the Selection Committee's recommendation, the petitioner had retired and, therefore, he was not promoted and consequently no deemed date was required to be granted and his application for deemed date could not be accepted. It is this order which is under challenge in this petition and also a prayer for grant of deemed date of promotion to

the post in Class-II category.

3. Mr. Udayan P. Vyas learned advocate for the petitioner has submitted that the petitioner has been wrongly denied promotion to the post of Shirestedar by respondent on appropriate date and that had deprived him of chance to have promotion to the next promotional post which was in Class-II. He further submitted that this has happened only because of the default/mistake committed by the respondents in recording deemed date of promotion to the post of Shirestedar. According to him, he should have been granted deemed date of promotion to the post of Shirestedar above Mr.B.S. Shah, as he should have been promoted to the said post ahead of him, but that has not been done and, therefore, when the Selection Committee considered the case of Mr.Shah on 23rd July, 1987, his case was not considered for promotion to the post in Class-II cadre. Lastly, he has submitted that since this injustice is caused to the petitioner on account of respondents, it is required to be redressed by this Court by granting prayer for deemed date of promotion to the petitioner.

3.1. As against that Mr.Pradip Bhate learned A.G.P. appearing for the respondents has submitted that since on 23rd July, 1987, the petitioner was not promoted to the post of Shirestedar, the Selection Committed has not considered his case for promotion to the post in Class-II cadre and, therefore, the grievance of the petitioner is totally uncalled for. He has, therefore, prayed that the petition be dismissed.

4. Having considered the submissions and affidavits of learned advocates and having carefully gone through the record of this petition, it is very clear that the petitioner has been wrongly denied his right to have promotion to Class-II, because he was not promoted to the post of Shirestedar in time. It is also clear that right from the beginning the petitioner had been agitating before the concerned authority to consider the case for promotion to the post of Shirestedar and subsequently after promotion to the said post to grant him deemed date promotion to the said post vide order dated 1st April, 1999. They granted deemed date of promotion on 29th January, 1980 against his actual promotion to the post of Shirestedar of 25th January, 1988. However, for reasons best known to the respondents that order was not acted upon and again second order came to be passed fixing the deemed date of promotion to the post of Shirestedar as 3rd November, 1987. This was again disputed by the petitioner by filing appropriate representation/appeal

and his case was reconsidered in light of the same. The respondents vide order dated 31st March, 1990 decided that in view of the fact that the petitioner had cleared SSG examination earlier in point of time then Mr.B.S. Shah, he was required to be placed above Mr.B.S. Shah. It may be noted here that so far Mr.B.S. Shah is concerned, his actual promotion took place on 1st June, 1982. As against that the petitioner was actually promoted to the post of Shirestedar on 25th January, 1988. By the said order the petitioner was given deemed date of promotion to the post of Shirestedar as 1st June, 1982 i.e. the date on which Mr.Shah was promoted to the said post.

3.1. In view of this, it is very clear that the petitioner was entitled to the promotion to the post of Shirestedar on 1st June, 1982 and he was required to be placed above Mr.B.S. Shah. However, though Mr.Shah was promoted to the post of Shirestedar on 1st June, 1982, the petitioner for some reason or the other was not promoted and he was promoted to the said post as late as 25th January, 1988. Obviously, when promotion is granted so late to him, the Selection Committee in July, 1987 for considering the grant of promotion to the post in Class-II, the petitioner's case was not considered and, therefore, he had been wrongly deprived of that opportunity. Subsequently the Selection Committee has considered the case of the petitioner and as nothing adverse was found against him, recommended promotion. But before he could be granted promotion, he reached the age of superannuation and he retired as Assistant District Inspector Land Records. Had he been promoted to the post of Shirestedar alongwith Mr.B.S. Shah, he would have been able to reach to the post in Class-II cadre. It is only because of the erroneous approach adopted by the respondents, the said chance has been denied to him. The respondents have contested this petition by filing affidavit-in-reply, but in the said affidavit, except for the say, that since in July, 1987 the petitioner was not promoted to the post of Shirestedar, his promotion was not considered. Nothing more has been stated. In fact of all other counts, the said affidavit admits the case of the petitioner. The respondents have completely failed to assign or explain the reasons why the petitioner was not promoted alongwith Mr.B.S. Shah to the post of Shirestedar. When the respondents have not been able to do so, injustice caused to the petitioner on that count is required to be redressed. This petition is, therefore, required to be allowed. The impugned order at annexure-O dated 4th February, 1999 is quashed and set aside. The respondents are directed to grant

deemed date of promotion to the post in Class-II on 1st June, 1982 i.e. the date on which his junior Mr.B.S. Shah was promoted to the said post. It is further directed that the respondents shall work out all the incidental benefits on the basis of the said deemed date including the retiral benefits and make the same available to the petitioner at the earliest and in any case not later than 30th April, 2004. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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